

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 525 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of an Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?  
No

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HEIRS OF CHHAGANLAL JIVABHAI

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR, RAJKOT & ANR.

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Appearance:

Shri Y.S. Mankad, Advocate, for the Petitioners

Shri A.G. Uraizee, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 01/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 3rd September 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on

25th January 1988 in Appeal No. Rajkot-1484 of 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 7487.25 square meters.

2. The facts giving rise to this petition move in a narrow compass. Petitioners Nos. 1 to 5 are sons of one Chhaganlal Jivabhai (the deceased for convenience), petitioner No. 6 is son of petitioner No. 1 and petitioner No. 7 is son of petitioner No. 2. It appears that the deceased was holding one parcel of land bearing Survey No.146 situated at village Kotharia within the urban agglomeration of Rajkot. He appears to have filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. The deceased breathed his last some time on 26th August 1982. Thereafter the declaration filed by him was processed by respondent No.1 herein. A draft statement under sec. 8(3) of the Act was sent in the name of the deceased. It appears that, since the deceased was no longer alive, the same was served to his heirs and legal representatives. They filed their objections thereto on 21st July 1984. A copy thereof is at Annexure A to this petition. Thereafter, by the order passed on 3rd September 1984, respondent No.1 declared the holding of the deceased to be in excess of the ceiling limit by 7487.25 square meters. Its copy is at Annexure B to this petition. That aggrieved the petitioners. They carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1484 of 1984. By the order passed on 25th January 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure D to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the order at Annexure D to this petition.

3. Learned Advocate Shri Mankad for the petitioners has contended that the properties in the hands of the deceased were joint Hindu family properties and they were partitioned on 1st September 1975 and no co-parcener's share after partition was in excess of the ceiling limit prescribed under the Act. Learned Advocate Shri Mankad for the petitioners has further submitted that partition of a joint Hindu family property or a family arrangement in that regard would not amount to any transfer for the purposes of sec. 4(4) of the Act. In that view of the matter, runs his submission, the view taken by the authorities below that the properties in the hands of the deceased were not joint Hindu family properties

was not correct. As against this, learned Assistant Government Pleader Shri Uraizee for the respondents has urged that the authorities below have recorded a finding of fact on the basis of the material on record to the effect that the properties in the hands of the deceased were not joint Hindu family properties and the case of partition was not believed for want of its registration. It has been urged on behalf of the respondents that whether or not the properties in the hands of the deceased were joint Hindu family properties would be a question of fact and this Court, in exercise of its jurisdiction under art. 226 of the Constitution of India, need not interfere with the finding of fact recorded by the authorities below on the basis of the material on record.

4. With a view to ascertaining the correct position on record, learned Assistant Government Pleader Shri Uraizee has kept some official from the office of respondent No.1 present with the record of the case. It transpires therefrom that the deceased filed the declaration of his holding in his capacity as an individual. That declaration was with respect to his so-called share in the properties shown therein stating therein that the properties were divided amongst his sons in accordance with what is stated in one schedule appended thereto. In support, a sort of family arrangement showing partition of the properties to different co-parceners was also annexed. It transpires from the record that some printed form was presented after filling in the necessary blanks for the purposes of showing that partition of the joint Hindu family property or a family arrangement in that regard had taken place. All the three copies produced on the record bears no date. That by itself would doubt the genuineness of the so-called partition of the so-called joint Hindu family properties or the so-called necessary family arrangement in that regard.

5. It transpires from the material on record that the deceased executed his will on 19th September 1968. Thereunder he bequeathed his properties to his sons and his daughters as mentioned therein. As pointed out hereinabove, the deceased breathed his last some time on 26th August 1982. It appears that an application was filed in the Court of the Civil Judge (S.D.) at Rajkot for obtaining Letters of Administration on the strength of the aforesaid will executed by the deceased. It came to be registered as Civil Miscellaneous Application No. 2 of 1983. By the order passed on 17th November 1983 in the aforesaid proceeding, the learned 2nd Joint Civil Judge (S.D.) at Rajkot accepted the application and granted the necessary Letters of Administration on the strength of the will in question. If the partition of the properties in the hands of the deceased was effected on 1st September 1975, there was no necessity for any person to obtain the Letters of

Administration with respect to the will executed by the deceased on 19th September 1968. It is not the case of the petitioners that, after the partition of the joint family properties was effected or the family arrangement in that regard was made on 1st September 1975, the deceased changed his will by executing a new testamentary document or by executing a codicil. In that view of the matter, it would pass comprehension that the Letters of Administration were restricted only to the share of the deceased in partition and not to the will in its entirety. The fact that the application for the Letters of Administration was made on the strength of the will would belie the case of the petitioners that there was a partition of the family properties in the hands of the deceased effected on 1st September 1975 or any family arrangement was made in that regard. In that view of the matter, the authorities below were right in coming to the conclusion that the properties in the hands of the deceased were not joint Hindu family properties and that they were not partitioned.

6. The testamentary document is on record along with the Letters of Administration granted in the proceeding before the competent civil court at Rajkot. It transpires from the testamentary document that the deceased described the properties in his hands to be his self-acquired properties. In that view of the matter also, the theory of the joint Hindu family properties in the hands of the deceased as propounded by the petitioners herein falls to the ground.

7. It transpires from the impugned orders that certain parcels of land had therein construction in existence prior to coming into force of the Act. Such construction will have to be excluded from the holding of the deceased in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. It does not become clear from the material on record as to what exact area of construction together with the land appurtenant thereto is required to be excluded from the holding of the deceased. For that limited purpose, the matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the aforesaid binding ruling of the Supreme Court.

8. In view of my aforesaid discussion, the impugned order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure D to this petition will have to be quashed and set aside for the aforesaid limited purpose only. The matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh

decision according to law in the light of this judgment of mine. By way of abundant caution, it is clarified that the entire holding declared by the deceased was his individual holding and it was not in the nature of any joint Hindu family property and the so-called partition was sham and bogus.

9. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 3rd September 1984 under sec. 8(4) of the Act at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 25th January 1988 in Appeal No. Rajkot-1484 of 1984 is quashed and set aside for the aforesaid limited purpose only. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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